PUBLIC BANK BHD.

v.

BAN LOONG CO.

HIGH COURT MALAYA, IPOH
ABDUL MALEK AHMAD J
[CIVIL SUIT NO. 23-108-88]
7 OCTOBER 1989

CIVIL PROCEDURE: *Summary judgment - Appeal - Technical objections - Whether multiplicity of proceedings - Whether proceedings should be stayed pending completion of foreclosure proceedings - Judgment sum and interest rate disputed - Notification of change of interest rate - Whether notice of demand properly served.*

This was an appeal by the defendant against summary judgment allowed by the Senior Assistant Registrar. Following objections were raised at the appeal:

That the land charged by partners of the firm should be sold first and the plaintiffs could only claim for the balance and that the present suit should be stayed pending completion of foreclosure proceedings (i.e., multiplicity of proceedings). Further the defendant complained that there was no notification of variation of interest rate and also disagreed with the judgment sum. Further complaint was made of the letters of demand which were sent to the defendant's old address.

The learned Judge was satisfied from the evidence that the defendant admitted the amounts outstanding, which the plaintiffs had also proven pursuant to the Bankers' Books (Evidence) Act 1949. Periodical statements of account were sent to the defendants, to which there was never any complaint of discrepancies. There was correspondence to show that the loans were disbursed over a period of time and there was due notification of variation of interest rate. The letters of demand were duly acknowledged by the defendant. The claim herein was against the defendant as borrower, whereas foreclosure proceedings was against the chargors of property charged.

Held:

[1] defendant had been notified of the accounts from time to time; and

[2] had been notified of the variation of rate of interest; and

[3] had been properly served with the notice of demand

[4] that there was no multiplicity of proceedings

[Dismissing the appeal with costs]

For the plaintiff - K.C. Chin; M/s. Yeap & Yeap
For the defendant - S.A. Lingam; M/s. S.A. Lingam & Co.

JUDGMENT

Abdul Malek Ahmad J:

On 8 February 1989, the learned Senior Assistant Registrar had given final judgment in favour of the plaintiff against the defendant for RM540,817.83 and RM193,763.85 with interest and costs. These amounts are as prayed for in the statement of claim based on the balance as at

30 March 1988 for the defendant's overdraft account 01-09-04005-5 and fixed loan account 05-09-70537-8 with the plaintiff. The interest claimed is at the rate of 12% per annum on monthly rests as from 1 March 1988 to the date of payment on the first RM500,000, and at 13% per annum on monthly rests as from that same date to the date of payment, on the overdraft account, and at 11% per annum on yearly rests as from 1 April 1988 to the date of payment on the fixed loan account.

At the appeal before me, learned Counsel for the defendant had raised the usual technical objections advanced for cases of this kind namely:

(a) that the four pieces of land charged by the partners of the defendant should be sold first and that the plaintiff can only claim for the balance;

(b) that the defendant did not agree with the judgment amounts and the rate of interest;

(c) that these proceedings should be postponed until after the completion of foreclosure proceedings then fixed for 22 September 1989;

(d) that the letters of demand had not been served on the defendant as they had been sent to the old address; and

(e) that the defendant was notified of the change of the rate of interest.

As for the disputed accounts, learned Counsel for the plaintiff had referred to Encl. 12 para. 3 and Exhibit "OHH2" where the defendant had admitted to the balance of both accounts standing as at 31 December 1986, that both accounts had been proved by the plaintiff under the Bankers' Books (Evidence) Act 1949 at Encl. 5 paras. 2 and 3 and Exhibits "OHH1" and "OHH2"; that the plaintiff had never received any complaints from the defendant as to any discrepancies in the accounts, which were sent monthly for the overdraft account and half yearly for the fixed loan account, as required by the notice at the footnote of the statements of accounts, that the correspondence exhibited at Encl. 7 showed that the loans had been disbursed from time to time and this is supported by the fact that the six charges had been spread over the years indicating that the loans had in fact been given; that the same correspondence also showed that the defendant had been informed of the variation of interest rate at Encl. 5 Exhibit "OHH5" marked "I", that in any case the defendant had agreed to the variation without notice as at Exhibit "PYK6" at p. 8 of Encl. 9, that the notice of demand had been acknowledged by the defendant as at Encl. 5 para. 8 and at Exhibit "OHH3" and at Encl. 7 para. 8 and at Exhibit "OHH6" "J" and "K" and that two of the three partners of the defendant had admitted staying at their old address by letter to the plaintiff's solicitors dated 15 October 1988 at Encl. 12 para. 2 and Exhibit "OHH1". As for the multiplicity of proceedings, the plaintiff had explained that they were claiming against the borrower which was the defendant whereas in the foreclosure proceedings, they were going against the partners of the defendant who were the chargors of the property charged.

On these considerations, it is obvious that the submissions of learned Counsel for the plaintiff in the light of the affidavits and exhibits had totally demolished the arguments of Counsel for the defendant and I saw no reason to allow the appeal. To reiterate, I could safely conclude in the circumstances that there had been no multiplicity of proceedings and that the accounts were correct and that the defendant:

(a) had been notified of the accounts from time to time;

(b) had been notified of the variation of interest; and

(c) had been served with the notice of demand.

I accordingly dismissed the appeal with costs.

Also found at [1990] 1 CLJ 320